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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/385,414	08/30/1999	JAMES B. POAGE	7099.1186	9114

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EXAMINER

COLON, CATHERINE M

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 01/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/385,414	<b>Applicant(s)</b> POAGE ET AL.	
	<b>Examiner</b> C. Michelle Colon	<b>Art Unit</b> 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 October 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 18 and 21-24 is/are rejected.
- 7) ☒ Claim(s) 16, 17, 19 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. The following is Final Office Action in response to the communication received on October 24, 2002. Claims 1 – 24 are now pending in this application.

### ***Response to Arguments***

2. Applicant's Request for Reconsideration has been fully considered, but found unpersuasive. In the Remarks, Applicant argues the following: 1) that Day et al. does not disclose determining a likelihood that the new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests; and 2) that Simons et al. does not disclose determining a likelihood that the new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests.

With regards to argument 1), Examiner agrees that Day et al. does not disclose determining a likelihood that the new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests. In fact, Examiner acknowledged this deficiency of Day et al. in the last Office Action of paper no. 12. Furthermore, Examiner applied a 103 rejection to combine Day et al.'s teachings with Simons et al.'s to compensate for that deficiency. Additionally, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Accordingly, this argument is moot in light of the fact that Examiner never

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asserted that Day et al. disclosed "determining a likelihood that the new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests" in the last Office Action.

With regards to argument 2), Examiner respectfully disagrees with Applicant's assertion that Simons et al. does not disclose determining a likelihood that the new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests. To begin with, Examiner notes that Applicant bases this argument on Applicant's definition of the term "hit rate" and its relationship with past initiatives and past sales requests *as it has been defined solely in the arguments*. In the Remarks, Applicant explains the term "hit rate" to mean when an initiative is selected for presentation to a customer after the customer has made a request. However, this definition of "hit rate" is not in the claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In fact, this definition of "hit rate" has never been explained to Examiner throughout the entire prosecution of this application. Accordingly, Examiner has been interpreting "hit rate" to generally mean when an initiative *has been offered to and used by a customer*, which is the commonly accepted definition in the art. For example, a "hit rate" of an online advertisement is when a customer selects or "clicks" on the advertisement displayed to him/her; a "hit rate" of a coupon is when a customer redeems the coupon offered for discount of a purchase; thus, a "hit rate" of a marketing initiative is when that marketing initiative *has been offered to a customer and the*

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*customer has accepted or redeemed* the marketing initiative. Consequently, Examiner has been examining the claims according to this generally accepted definition of “hit rate” in the art, and not the definition presented by Applicant in the arguments.

For the reasons stated above, Examiner asserts that Simons et al. does disclose determining a likelihood that the new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests. Simons et al. discloses a system that analyzes coupon redemption data in relation to the sale during which the coupon was used. In other words, Simons et al. discloses a system that analyzes coupon “hit rates” in relation to the sale during which the coupon was redeemed. In col. 3, lines 51 – 62, Simons et al. discloses a neural network that conducts statistical analyses of coupon “hit rates” with characteristics, such as buying behaviors and trends, of consumers who redeemed the coupons during past sales in order to generate new coupons that are tailored to specific consumer characteristics so that consumers will be more likely use the coupon during a purchase. Col. 9, lines 15 – 67 further disclose using stored historical data of coupon “hit rates” associated with coupon characteristics and consumers’ purchasing characteristics to determine whether or not a new coupon will be effective. Simons et al. further discloses generating reports reflecting the information to determine whether a new coupon will be effective in persuading a consumer to use the coupon to make a purchase (i.e., the “hit rate”). Accordingly, Simons et al. does, in fact, disclose determining a likelihood that the new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests.

Therefore, Applicant's arguments are found unpersuasive. The rejections of Office Action paper no. 12 for claims 1 – 15, 18, 21 – 24 are maintained and repeated below.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 – 15, 18, 21 – 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. (U.S. 5,857,175) and Simons et al. (U.S. 6,230,143).

As per claim 1, Day et al. discloses a method for creating a marketing initiative comprising the steps, performed by a processor, of:

inputting offer parameters for a new initiative, including an initiative time period and an initiative description (col. 3, lines 60 – 62; col. 7, lines 13 – 26; The reference discloses inputting offer parameters for new initiatives, including when the offer is to expire.); and

associating customer selection criteria with the offer parameters (col. 3, line 62 – col. 4, line 24; col. 7, lines 18 – 22; The reference discloses associating various customer selection criteria such as brand loyalty, purchasing frequency and other criteria with the offer parameters.).

While Day et al. discloses determining which initiatives were effective (col. 8, lines 9 – 17), Day et al. does not expressly disclose determining a likelihood that the new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests; and providing a result indicating the effectiveness of the new initiative.

Simons et al. discloses determining a likelihood that the new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests (col. 3, lines 56 – 62; col. 9, lines 15 – 21, 37 – 40, 51 – 58 and 62 – 67; The references discloses predicting the likelihood that a new initiative will be effective using stored statistics based on characteristics from past initiatives such as purchasing trends, group buying behavior and individual price sensitivity.); and

providing a result indicating the effectiveness of the new initiative (col. 9, lines 51 – 58; The reference discloses providing the results indicating the effectiveness of new initiatives via transaction reports.).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to determine a likelihood that a new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests and provide a result indicating the effectiveness of the new initiative because doing so provides businesses with historical and proven support for developing effective and successful marketing campaigns (Simons et al., col. 9, lines 53 – 55; col.

10, lines 2 – 6). Furthermore, it is old and well known in the art to use historical statistics to predict a likelihood of success of a marketing offer.

As per claim 2, Day et al. discloses the method of claim 1, further comprising the step of:

storing the new initiative in a database (col. 3, lines 23 – 28).

Day et al. does not expressly disclose storing the new initiative based on the result.

Simons et al. discloses storing the new initiative based on the result (col. 9, lines 37 – 51; Figures 1 and 5).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to store the new initiative based on the result because doing so allows businesses to maintain and monitor information about the effectiveness and success rate of initiatives, which ultimately allows them to develop improved marketing strategies.

As per claim 3, Day et al. discloses the method of claim 1, wherein said initiative time period includes an effective date and an expiration date (Figures 2 and 3).

As per claim 4, Day et al. discloses the method of claim 2, wherein said database is at least one of a decision support subsystem (DSS) database and a runtime offer database (col. 3, lines 23 – 28).

As per claim 5, Day et al. discloses the method of claim 2, further comprising:  
determining an impact of the new initiative on other initiatives stored in the database (col. 6, lines 1 – 12; col. 7, lines 32 – 36; The references discloses a



possibility for excluding certain special offers from broadcast if it is determined that other offers will be more valuable to certain customers.).

As per claim 6, Day et al. discloses the method of claim 4, further comprising the steps of:

determining whether the new initiative is to be put into effect immediately (col. 9, lines 1 – 26; Figures 1 – 3 and 5; The reference discloses determining what action should be taken on an initiative based on the status of the initiative.);

storing the new initiative in the runtime offer database based on the determination that the new initiative is to be put into effect immediately (col. 3, lines 23 – 28; col. 9, lines 1 – 26); and

storing the new initiative in the DSS database based on the determination that the new initiative is not to be put into effect immediately (col. 3, lines 23 – 28; col. 9, lines 1 – 26).

As per claim 7, Day et al. discloses the method of claim 6, further comprising the step of:

applying data from the DSS database to the runtime offer database periodically in a time-initiated load cycle (col. 3, lines 57 – 58; col. 7, lines 13 – 26; The reference discloses setting up the initiatives and “staging” the initiatives, or applying decision criteria to the initiatives, prior to placing the initiatives into effect.).

As per claim 8, Day et al. discloses the method of claim 4, further comprising:  
receiving, at a runtime offers subsystem, a sales request from a marketing host (col. 6, lines 13 – 19; The reference discloses receiving a sales request at check-out,

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associating a purchased product with a customer account, and determining whether a special offer is available for that product.);

extracting key values from said sales request, said key values including customer selection criteria (col. 6, lines 19 – 33);

creating key structures using said key values (col. 6, lines 19 – 33);

compressing said key structures into a series of key-paths (col. 6, lines 19 – 33);

and

searching said runtime offer database using the key-paths to determine an initiative that is most relevant to the sales request (col. 6, lines 19 – 33; The reference discloses applying special initiatives to the customer's total if a purchased product has a corresponding special initiative.).

As per claim 9, Day et al. discloses the method of claim 8, further comprising:

sending the most relevant initiative to the marketing host (col. 6, lines 19 – 49;

The reference discloses downloading relevant initiatives from the database.);

presenting the most relevant initiative to a customer (col. 6, lines 19 – 49; The reference discloses presenting to the customer the most relevant initiative.); and

tracking initiatives that are presented to customers to assist in market analysis (col. 14, lines 46 – 58; The reference discloses tracking the purchase history of the customer, including whether or not the customer accepted an initiative.).

As per claim 10, Day et al. discloses a sales manager system including a sales manager workstation for creating a marketing initiative comprising:

a sales manager workstation controller including means for entering offer parameters for a new initiative and means for associating customer selection criteria with the offer parameters (col. 3, lines 23 – 56).

While Day et al. discloses determining which initiatives were effective (col. 8, lines 9 – 17), Day et al. does not expressly disclose a trend analysis unit using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests to determine a likelihood that the new initiative will be effective, wherein a result is provided indicating the effectiveness of the new initiative.

Simons et al. discloses a trend analysis unit using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests to determine a likelihood that the new initiative will be effective (col. 3, lines 56 – 62; col. 9, lines 15 – 21, 37 – 40, 51 – 58 and 62 – 67; The references discloses predicting the likelihood that a new initiative will be effective using stored statistics based on characteristics from past initiatives such as purchasing trends, group buying behavior and individual price sensitivity.), wherein

a result is provided indicating the effectiveness of the new initiative (col. 9, lines 51 – 58; The reference discloses providing the results indicating the effectiveness of new initiatives via transaction reports.).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to determine a likelihood that a new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests and provide a result indicating the effectiveness of the new initiative

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because doing so provides businesses with historical and proven evidence to develop effective and successful marketing campaigns (Simons et al., col. 9, lines 53 – 55; col. 10, lines 2 – 6). Furthermore, it is old and well known in the art to use historical statistics to predict a likelihood of success of a marketing offer.

As per claim 11, Day et al. discloses the sales manager system of claim 10, wherein the new initiative is stored in a database (col. 3, lines 23 – 28).

Day et al. does not expressly disclose storing the new initiative based on the result.

Simons et al. discloses storing the new initiative based on the result (col. 9, lines 37 – 51; Figures 1 and 5).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to store the new initiative based on the result because doing so allows businesses to maintain and monitor information about the effectiveness and success rate of initiatives, which ultimately allows them to develop improved marketing strategies.

As per claim 12, Day et al. discloses the sales manager system of claim 11, wherein the database is at least one of decision support subsystem (DSS) database and a runtime offer database (col. 3, lines 23 – 28; The reference discloses that each computer includes a database of special offers including customized targeted offers to be made to certain customers based on the targeting parameters.).

As per claim 13, Day et al. discloses the sales manager system of claim 11, further comprising:

an impact analysis unit for determining an impact of the new initiative on other initiatives stored in the database (col. 6, lines 1 – 12; col. 7, lines 32 – 36; The reference discloses a possibility for excluding certain special offers or changing the quantity of certain special offers from being shown if it is determined that other offers will be more valuable (provide a greater discount) to certain customers.).

As per claim 14, Day et al. discloses the sales manager system of claim 12, further comprising:

means for determining whether the new initiative needs to be put into effect immediately (col. 9, lines 1 – 26; Figures 1 – 3 and 5; The reference discloses determining what action should be taken on an initiative based on the status of the initiative.);

means for storing the new initiative in the runtime offer database based on the determination that the new initiative is to be put into effect immediately (col. 3, lines 23 – 28; col. 9, lines 1 – 26); and

means for storing the new initiative in the DSS database based on the determination that the new initiative is not to be put into effect immediately (col. 3, lines 23 – 28; col. 9, lines 1 – 26).

As per claim 15, Day et al. discloses the sales manager system of claim 14, wherein data from the DSS database is applied to the runtime offer database periodically in a time-initiated load cycle (col. 3, lines 57 – 58; col. 7, lines 13 – 26; The reference discloses setting up the initiatives and “staging” the initiatives, or applying decision criteria to the initiatives, prior to placing the initiatives into effect.).

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As per claim 18, Day et al. discloses a sales manager system comprising:

a sales manager workstation for creating a marketing initiative, said sales manager workstation including a sales manager workstation controller including means for entering offer parameters for a new initiative and means for associating customer selection criteria with the offer parameters (col. 3, lines 23 – 62; col. 7, lines 13 – 26; The reference discloses inputting offer parameters for new initiatives.), and an impact analysis unit for determining an impact of the new initiative on the other initiatives stored in a database (col. 6, lines 1 – 12; col. 7, lines 32 – 36; The reference discloses a possibility for excluding certain special offers or changing the quantity of certain special offers from being shown if it is determined that other offers will be more valuable (provide a greater discount) to certain customers.);

a decision support system (DSS) database connected to the sales manager workstation for storing the new initiative (col. 3, lines 23 – 62);

a runtime offers subsystem connected to the DSS database for using information from a customer request to determine a most targeted initiative (col. 6, lines 13 – 49);  
and

a marketing host connected to the runtime offers subsystem, said marketing host including means for sending customer requests to the runtime offers subsystem (col. 10, lines 19 – 29; Figure 5).

While Day et al. discloses determining which initiatives were effective (col. 8, lines 9 – 17), Day et al. does not expressly disclose a trend analysis unit using stored

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statistics reflecting hit rates based on characteristics of past initiatives with past sales requests to determine a likelihood that the new initiative will be effective.

Simons et al. discloses a trend analysis unit using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests to determine a likelihood that the new initiative will be effective (col. 3, lines 56 – 62; col. 9, lines 15 – 21, 37 – 40, 51 – 58 and 62 – 67; The references discloses predicting the likelihood that a new initiative will be effective using stored statistics based on characteristics from past initiatives such as purchasing trends, group buying behavior and individual price sensitivity.).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have a trend analysis unit using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests to determine a likelihood that the new initiative will be effective because doing so provides businesses with historical verification in order to develop effective and successful marketing campaigns (Simons et al., col. 9, lines 53 – 55; col. 10, lines 2 – 6). Furthermore, it is old and well known in the art to use historical statistics to predict a likelihood of success of a marketing offer.

As per claim 21, Day et al. discloses a method for creating a marketing initiative comprising the steps, performed by a processor, of:

inputting a set of new initiatives, wherein each initiative includes an initiative time period and an initiative description (col. 3, lines 60 – 62; col. 7, lines 13 – 26; The

reference discloses inputting offer parameters for new initiatives, including when the offer is to expire.); and

associating customer selection criteria with each new initiative (col. 3, line 62 – col. 4, line 24; col. 7, lines 18 – 22; The reference discloses associating various customer selection criteria such as brand loyalty, purchasing frequency and other criteria with the offer parameters.).

While Day et al. discloses determining which initiatives were effective (col. 8, lines 9 – 17), Day et al. does not expressly disclose determining a likelihood that each new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests; and providing a result indicating the effectiveness of the new initiative.

Simons et al. discloses determining a likelihood that each new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests (col. 3, lines 56 – 62; col. 9, lines 15 – 21, 37 – 40, 51 – 58 and 62 – 67; The references discloses predicting the likelihood that a new initiative will be effective using stored statistics based on characteristics from past initiatives such as purchasing trends, group buying behavior and individual price sensitivity.); and

providing a result indicating the effectiveness of each new initiative (col. 9, lines 51 – 58; The reference discloses providing the results indicating the effectiveness of new initiatives via transaction reports.).



At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to determine a likelihood that a new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests and provide a result indicating the effectiveness of each new initiative because doing so provides businesses with historical and proven evidence to develop effective and successful marketing campaigns (Simons et al., col. 9, lines 53 – 55; col. 10, lines 2 – 6). Furthermore, it is old and well known in the art to use historical statistics to predict a likelihood of success of a marketing offer.

As per claim 22, Day et al. discloses the method of claim 21, further comprising:  
selectively storing in a database new initiatives from the set of new initiatives  
(col. 3, lines 23 – 28).

Day et al. does not expressly disclose storing the set of new initiatives based on the result associated with each new initiative in the set.

Simons et al. discloses storing the set of new initiatives based on the result associated with each new initiative in the set (col. 9, lines 37 – 51; Figures 1 and 5).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to store the new initiative based on the result because doing so allows businesses to maintain and monitor information about the effectiveness and success rate of initiatives, which ultimately allows them to develop improved marketing strategies.

As per claim 23, Day et al. discloses the method of claim 22, further comprising:

determining an impact of each new initiative on other new initiatives in the set of new initiatives and other initiatives stored in the database (col. 6, lines 1 – 12; col. 7, lines 32 – 36; The references discloses a possibility for excluding certain special offers from broadcast if it is determined that other offers will be more valuable to certain customers.).

As per claim 24, Day et al. discloses a data processing system for creating a marketing initiative, comprising:

a memory having program instructions (col. 3, lines 39 – 42 and 57 – 67; col. 4, lines 1 – 9; Figure 1; The reference discloses a supervisory computer used to perform special offer maintenance.); and

a processor responsive to the program instructions to input offer parameters for a new initiative, including an initiative time period and an initiative description (col. 3, lines 60 – 62; col. 7, lines 13 – 26; The reference discloses inputting offer parameters for new initiatives, including when the offer is to expire.) and associate customer selection criteria with the offer parameters (col. 3, line 62 – col. 4, line 24; col. 7, lines 18 – 22; The reference discloses associating various customer selection criteria such as brand loyalty, purchasing frequency and other criteria with the offer parameters.).

While Day et al. discloses determining which initiatives were effective (col. 8, lines 9 – 17), Day et al. does not expressly disclose determining a likelihood that the new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests; and providing a result indicating the effectiveness of the new initiative.

Simons et al. discloses determining a likelihood that the new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests (col. 3, lines 56 – 62; col. 9, lines 15 – 21, 37 – 40, 51 – 58 and 62 – 67; The references discloses predicting the likelihood that a new initiative will be effective using stored statistics based on characteristics from past initiatives such as purchasing trends, group buying behavior and individual price sensitivity.); and

providing a result indicating the effectiveness of the new initiative (col. 9, lines 51 – 58; The reference discloses providing the results indicating the effectiveness of new initiatives via transaction reports.).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to determine a likelihood that a new initiative will be effective using stored statistics reflecting hit rates based on characteristics of past initiatives with past sales requests and provide a result indicating the effectiveness of the new initiative because doing so provides businesses with hard evidence to develop effective and successful marketing campaigns (Simons et al., col. 9, lines 53 – 55; col. 10, lines 2 – 6). Furthermore, it is old and well known in the art to use historical statistics to predict a likelihood of success of a marketing offer.

***Allowable Subject Matter***

5. Claims 16, 17, 19 and 20 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- WO 98/49640 discusses a database and software system for managing client profiles used for marketing; and

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- Westergren, Jeffrey M. "Datamining: The key to one-to-one marketing," *Bank Marketing*, February 1996, discusses using databases to establish clusters of customers based on their propensity to purchase.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Colon whose telephone number is 703-605-4251. The examiner can normally be reached Monday – Thursday from 8:30am to 5:30pm and every other Friday from 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 703-305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***

***Washington D.C. 20231***

or faxed to:

703-305-7687      [Official Communications; including After Final  
communications labeled "Box AF"]

703-746-7202      [For status inquiries, draft communication, labeled  
"Proposed" or "Draft"]

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Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal  
Drive, Arlington, VA 7<sup>th</sup> floor receptionist.

*cmc*

cmc

January 12, 2003

*[Signature]*  
TARIQ R. HAFIZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600